

IN SENATE OF THE UNITED STATES.

JUNE 19, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT :

[To accompany bill H. R. No. 321.]

The Committee of Claims, to whom was referred House bill No. 321, entitled "An act for the relief of Thomas B. Graham," have had the same under consideration, and report:

That it appears the United States frigate Alleghany was anchored in the Mississippi river near the navy yard, Memphis, on the 31st of March, 1847, about 200 yards from the shore. The rapid current of the river caused her to swing several yards, first towards the one shore and then towards the other. The Alleghany could be seen at a considerable distance, by night as well as by day, as lights were kept on board at night. The Mississippi is nearly a mile wide where the frigate was anchored, and there was always ample room for boats, coming down or going up the river, to pass on either side. Nothing but ignorance of the effect of the currents of the river, or unskilfulness in navigating a boat, or negligence, could occasion a boat coming down the river, and trying to pass the frigate, to receive injury by coming in contact with her. Any boat could easily be kept clear of her by the exercise of ordinary caution and diligence. Yet some "twenty" flat boats, it is said, were "wrecked by the frigate!" in the summer of 1847, by their running aboard of her while she was at anchor, until, as Lieutenant McBlair very properly states, "*the boatmen had become more cautious and conversant with the effects of currents.*" This case (that of the flat boat "Broad Horn, No. 4") is one of the twenty, and if the prayer is allowed, to pay for her and her cargo, it is presumed the other nineteen will apply also.

It appears that, in broad day light, (6, a. m.) the "Broad Horn No. 4" ran so near the frigate that the latter, in swinging to her anchors, struck the boat and caused her to sink, and the petitioner claims of the United States the value of the boat and cargo, (less proceeds of sale at auction after being wrecked,) amounting to \$2,192 25, and the House have passed the bill allowing this claim. The grounds assumed are, that the frigate was improperly anchored

in the river; that she was an "obstruction" in the channel; that she ought to have been so moored and secured as to have prevented her swinging, and that the loss was caused by this; and that the United States are responsible for the negligence or ignorance of the officers of the frigate who had her in charge.

This committee cannot admit that the officers of the Alleghany had not full right, as had every other vessel, public or private, to anchor where they did. As strong exception could be made to her being anchored nearer either shore, it is not doubted that the middle of the river was the best and most proper place. She was no more an "obstruction," anchored there, than if navigating the river, and no more in the way of boats. She was anchored properly. The reason given for not having stern anchors to prevent her swinging, viz: that it caused trees and logs and brush to accumulate on her cables, and occasioned her to drag her anchors, is deemed satisfactory. If the frigate had a right to anchor there, she had a right to remain at her anchorage as long as the public interests required her to stay there; and shifting her position would in fact have increased the danger of other craft running foul of her.

The "Broad Horn, No. 4," this committee are entirely satisfied, ran into the Alleghany through the unskilfulness or negligence or ignorance of those on board. The idea of her not being able to go by the frigate anchored in the middle of the Mississippi river, if they had exercised ordinary caution and diligence, is one which this committee cannot entertain for one moment. She had nearly half a mile of deep water to pass in on each side of the frigate. Had her crew been prudent and skilful, there was no danger.

This committee, therefore, hold this to be a case in which the owner of the boat and cargo must bear the loss, as the result of the fault or negligence or ignorance of his crew. The case referred to, 1st Howard's Reports, page 89, Strout, et. al., vs. Foster, et. al., would be more pertinent if the Alleghany had received damage from the "Broad Horn, No. 4," and if the United States had prosecuted for redress; but even the rules there laid down, as applicable to the obstruction of "passes" and "channels" and "thoroughfares," cannot properly be applied to a river a mile wide, like the Mississippi. If so, it is improper to anchor at any place in the Mississippi. That case, or the principles laid down in it, have no relevancy to this case.

Besides, the committee are not disposed, even if the officers of the Alleghany anchored her improperly, to concede the doctrine that the United States are to pay all damages resulting from their unskilfulness, or negligence, or ignorance. They are, if culpable, liable, personally, to damages in a private action. If remiss, the citizen can also have them tried and punished by a naval court martial. This committee think the rule of liability is extended quite far enough, when the United States are held liable for the tortious acts, *deemed to be necessary*, of its naval and military officers, and done *bona fide* to advance the public service and interests. It might as well be held that, if a *soldier of the United States army* should negligently discharge his gun and wound a citizen, the

United States should remunerate him for his injury so sustained; or it would, perhaps, be a more apposite case if the soldier should place his bayonet in such an improper position along a public pathway, and a citizen was wounded by running against it, to urge the government should pay for the injury.

The committee, therefore, report said bill with a recommendation that it do not pass.

